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## **INTRODUCTION**

In accordance with the City Auditor's 1990-91 Audit Workplan, we have reviewed the City of San José's traffic citation collection process. We conducted our audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology.

## **BACKGROUND**

The City of San José receives approximately \$2.4 million annually for collections from traffic citations issued under the authority of the State of California Vehicle Code (CVC) and the City of San José Municipal Code, Title II. The City of San José Police Department (SJPD), San José Airport Police, and California Highway Patrol (CHP) enforce traffic regulations and issue citations. The City of San José splits net revenue from City-issued CVC and misdemeanor violations 80/20<sup>1</sup> with Santa Clara County. Revenues generated from CHP-issued citations are split 50/50 with Santa Clara County. Prior to sending the citations and reports to Santa Clara County for processing and distribution, the SJPD sorts those which must be sent to the municipal court (such as Driving Under the Influence (DUI), Reckless Driving, and Driving on a Suspended License) from those which are sent to the Traffic Court Facility (such as speeding and running a stop sign).

The Santa Clara County Department of Revenue issues a check to the City of San José each month for collections of municipal court installments. The Santa Clara County Controller wires monthly receipts for traffic court collections to the City of San José.

### **The City of San José Has Experienced Unexplained Revenue Declines In The Last Six Fiscal Years**

City of San José vehicle code fine revenues for fiscal years 1983-84 through 1989-90 are summarized in TABLE I.

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<sup>1</sup> According to the Santa Clara County Department of Revenue (DOR) staff, effective October 9, 1990, DOR started distributing 87% of its collections to the City of San José, based on verbal authorization from the County Executive.

**TABLE I**

**SUMMARY OF CITY OF SAN JOSÉ**  
**VEHICLE CODE FINE REVENUES**  
**FOR FISCAL YEARS 1983-84 THROUGH 1989-90**

1983-84	\$2,269,784
1984-85	\$2,702,647
1985-86	\$2,713,685
1986-87	\$2,575,340
1987-88	\$2,136,180
1988-89	\$2,251,438
1989-90	\$1,816,282

As shown above, City of San José vehicle code fine revenues have decreased from \$2,713,685 in 1985-86 to \$1,816,282 in 1989-90, a decrease of 33 percent. The City of San José's Budget Office made the following comments about these decreases:

1. In the January 22, 1990 Mid-Year Operating Budget Review:

*“Collections on vehicle code fines are significantly below 1988-89 levels. At this point last year \$937,000 had been received. This year only \$507,000 has been received. Several discussions with the Municipal Court staff have failed to completely explain the shortfall. It does appear that the number of violations has dropped. It also appears that there may be a delay in receiving payments from the Court. Staff will continue to investigate the matter in preparation for providing an estimate for this revenue source in 1990-91.”*

2. The 1990-91 Operating Base Expenditures and General Fund Revenue Estimates released on March 12, 1990:

*“Proceeds from vehicle code fines are running significantly below budgeted levels so far this fiscal year. The Administration is still working with the Police Department to determine the reason for this drop, but preliminary investigation has focused upon the impact of a rotation of staffing in the department's traffic enforcement unit, and a resulting drop in the number of citations issued. Pending more conclusive*

*evidence, the 1990-91 base estimate is based upon the projection of a \$250,000 shortfall in 1989-90 collections (to the \$1.8 million level) and a partial recovery to the \$2.0 million level in 1990-91. In comparison the actual collections in 1988-89 were \$2.25 million.”*

City of San José management subsequently requested the SJPD to explain the causes of the apparent drop in revenues from vehicle code violations as well as to formulate revenue estimates for both 1989-90 and 1990-91.

The SJPD responded in a memo that the relationship between the number of moving vehicle citations issued and the revenues collected is spurious. To illustrate this premise, the SJPD prepared a chart which showed that the City of San José collected \$100,000 more in revenues in 1988-89 than in 1987-88 even though the SJPD issued almost 24,000 fewer citations. The revenue collected is a result of numerous other factors such as:

- Type of citation issued;
- The number of violations on each citation. (One citation may contain as many as nine violations);
- The number of dismissals;
- Bail schedules; and
- The mix of formal and court probation assignments being made by the courts in the cases from which fines result.

The SJPD went on to provide several possible explanations for the downward trend:

1. Traditionally, about half of the moving vehicle citations are issued by the SJPD's Traffic Enforcement Unit and about half by Field Patrol. The total number of citations issued in the 1989-90 fiscal year is about 20 percent lower than issued in the previous year. The reduction in citations by the Traffic Enforcement Unit appears to be the result of a mandated shift in personnel. In January 1984, a mandatory five-year maximum time limit was established for all



officers in the unit. Beginning in January 1989, nine motor officers and ten radar officers rotated out of the unit and were replaced. In January 1990, three more motor officers were replaced, accomplishing the rotation plan. Training of new personnel was conducted on-the-job by other unit officers, resulting in lower productivity. The purpose of the rotation was to establish a better level of morale within the unit. This factor, plus a fully trained complement of officers, should return the unit to its previous level of productivity, assuming that citizen-generated traffic complaints and City Council service requests no longer increase as they have in recent years.

2. The primary reason for a drop in moving vehicle citations by the remainder of Field Operations is the increase in emergency calls for service without any additional officers. Self-initiated activities, including parking and traffic enforcement, suffer when officers must spend more time in responding to dispatched calls for service. Additional officers, once they complete training, should provide a remedy as long as the increase in staffing exceeds the increase in emergency calls for service.

Finally, personnel in Santa Clara County and personnel in other California counties have alleged that assessments and fees for municipal court cases have significantly increased. As a result, many people being sentenced were opting for public service work or jail time because they could not afford to pay the fine.

## **SCOPE AND METHODOLOGY**

Our audit objectives were to determine:

- whether the City of San José's controls over the issuance, processing, and voiding of traffic citations and police reports are adequate;
- the number and amount of the City of San José's traffic citations that are unpaid;
- whether the City of San José's percentage share of revenues from traffic citations is appropriate;
- the exposure to the City of San José resulting from a "no right to audit" provision in the contractual agreement with the Santa Clara County;
- the effect of municipal court assignments to formal probation on City of San José revenues;
- whether the City of San José and Santa Clara County have adequate management reports to effectively control and monitor unpaid traffic citations; and
- whether Santa Clara County is remitting traffic fine monies to the City of San José in a timely manner.

Our methodology included obtaining from City of San José Administration an understanding of their system of internal controls and how those controls prevent potential threats from occurring. We also developed an audit program to examine and evaluate management's internal control system by: observing operations, making inquiries, interviewing personnel, inspecting relevant data, analyzing reports, and testing controls. We also used statistical sampling techniques to determine the number and amount of unpaid traffic citations.

In our review of internal controls, we specifically excluded the following:

1. Tests of the accuracy and completeness of Santa Clara County's processing of traffic citations. We did not test Santa Clara County's Minor Offender Automated Citation Processing System (MACS) because the County's internal audit staff does this as a part of the State of California required biennial audit of the municipal and justice courts. Accordingly, we limited our audit scope to a review of Santa Clara County's audit program, working papers, and test results. The Santa Clara County's internal audit staff also did a management review of the County's on-line computerized traffic system in March 1989.
2. Tests of Santa Clara County's processing costs for collecting court-ordered accounts receivable. The Santa Clara County Department of Revenue is responsible for the collection of installment payments for court-ordered accounts receivable. We did not review these costs for two reasons:
  - a. To avoid duplicating work Santa Clara County's internal audit staff was already doing as a part of its audit of the Department of Revenue; and
  - b. Santa Clara County's processing costs were already an issue in the City of San José and the County's contract negotiations.
3. Tests of Santa Clara County's procedures relating to unclaimed bail and bail bond forfeitures. We did not review these procedures because Santa Clara County's internal audit staff assured us that the distribution of these amounts had been reviewed and found to be proper.

Based upon our assessment of the City of San José's internal controls over the traffic citations collection process, we conducted extensive testing to compensate for our overall assessment of limited internal control reliability.

## **FINDING I**

### **MORE DIRECT PERSONAL AND COERCIVE MEANS OF TRAFFIC CITATION ENFORCEMENT COULD GENERATE AN ADDITIONAL \$4,620,000 FOR THE CITY OF SAN JOSÉ AND REDUCE THE NUMBER OF UNAUTHORIZED DRIVERS ON CALIFORNIA STREETS**

The City of San José, Santa Clara County, and the State of California share on a predetermined basis the monies generated from traffic tickets issued within San José's city limits. Santa Clara County is responsible for administering the process to collect monies due from traffic citations and remitting those monies to the City of San José and the State of California. Our review of uncleared traffic citations revealed that the City of San José has not received adequate information regarding traffic citation monies due to it. Further, Santa Clara County's, the State of California's, and the City of San José's enforcement methods are for the most part ineffective.

As a result, as of November 1990:

- The City of San José, Santa Clara County, and the State of California were owed an estimated \$58 million from traffic tickets issued within San José's city limits;
- The City of San José's share of uncleared traffic citations was an estimated \$17 million; and
- Current collection process inadequacies undermine basic justice and fairness principles and allow persons to drive on California streets who are not authorized to do so.

In our opinion, Santa Clara County should produce and provide the City of San José with additional management information regarding uncleared traffic citations that were issued within San José's city limits. In addition, SJPd should serve arrest warrants on those persons with multiple uncleared citations. Further, Santa Clara County and the City of San José should pursue more personal and

coercive collection enforcement methods for uncleared traffic citations, such as the use of licensed collection agencies. Finally, the City of San José should request Santa Clara County Municipal Court, to the extent possible, to hear all of an offender's uncleared traffic citations when it hears a driving with a suspended license charge. By so doing, we estimate that the City of San José will collect an additional \$4,620,000, basic justice and fairness principles will be better served, and the number of unauthorized persons driving vehicles on California streets will be reduced.

**City Of San José, Santa Clara County, And  
The State Of California Participation  
In The Traffic Citations Issuance,  
Administration, And Enforcement Process**

The SJPd, San José Airport Police, and CHP issue traffic citations under the authority of the State of California Vehicle Code (CVC) and the City of San José Municipal Code, Title II. Citations for traffic infractions (such as, speeding and running a stop sign) are sent to the Traffic Court Facility (Facility) of the Santa Clara County Municipal Court for processing. The Facility is located on Ruff Drive in San José. If an offender does not pay or clear his or her citation, the Facility sends an arrest warrant to the SJPd for follow-up. Also, the Facility notifies the State Department of Motor Vehicles (DMV) to place a hold on the offender's driver's license. The City of San José, Santa Clara County, and the State of California benefit financially when offenders pay their citations. The Santa Clara County Controller remits monthly traffic citation payments to the City of San José and the State of California.

## **Current Facility Procedures**

According to the Santa Clara County Assistant to the Court Clerk and the Traffic Court Facility Manager, the following traffic citation fine collection procedures are used:

- The Facility inputs traffic citation information into its Minor Offenders Automated Computer System (MACS). MACS generates courtesy notices which are sent to defendants notifying them of their options. Defendants can either: 1) go to court, 2) go to traffic school, 3) forfeit bail, or 4) present evidence for dismissal. The options available to the defendant depend on the citation type.
- If a defendant does not take action within 45 days, the Facility generates a second notice which gives the defendant ten days to answer. The Facility: 1) places a Failure to Appear (FTA) violation on the citation record, 2) generates an arrest warrant, 3) increases the amount due, and 4) notifies the DMV, as applicable.
- Defendants who are eligible for and decide to go to court must either appear at the Facility, sign a promise to appear and set a date, or post bail through the mail and request a date. If the defendant fails to appear in court and has signed a promise to appear, then: 1) an arrest warrant is issued, 2) the amount due is increased, 3) the DMV is notified, and 4) an FTA charge is added to the record. If the defendant fails to appear and has posted bail, then the Facility will forfeit the bail and close the case.
- If the defendant is eligible for and chooses to attend traffic school, he or she sends a fee to the Facility, which in turn, sends traffic school information to the defendant. At this point, the defendant has ten days to register and four months to complete traffic school. The school notifies the Facility of those persons who completed traffic school, and the Facility clears the citation. If a defendant does not complete traffic school on time, then the Facility generates a second notice, which gives the defendant ten days to answer, and an arrest warrant.
- The Facility notifies the DMV of the disposition of reportable vehicle code violations and of driver's license holds. The DMV must place a hold when the Facility requests it to do so. However,

the DMV ultimately decides whether the driver's license will be held, suspended, or revoked.

- The Facility generates arrest warrants, notifies the defendants that arrest warrants have been issued, and files arrest warrants at the initiating agency, such as the SJPd. Defendants must clear arrest warrants at the initiating agency. The SJPd sends one notice to defendants who have outstanding arrest warrants.

**The City Of San José Has Not  
Received Adequate Information  
Regarding Outstanding Traffic Citation Fines**

Santa Clara County uses its MACS primarily as a transaction processing system to handle routine and recurring transactions. As such, MACS is very useful to lower level management. However, MACS does not produce the kind of management information that is useful to upper management. For example, MACS does not prepare reports comparing traffic citation fines imposed to those collected. Additionally, MACS does not produce an aging report of uncleared citations. Furthermore, the contractual agreement between the City of San José and Santa Clara County for the collecting and remitting of traffic citation fines does not require the County to provide the City with any management information regarding traffic fines. As a result, neither the City of San José nor Santa Clara County have enough management information to gauge the effectiveness of traffic fine collection and enforcement efforts.

## **Control Procedures**

In our opinion, Santa Clara County's controls over the collection of traffic citations are not adequate. In April 1988, the Auditing Standards Board of the American Institute of Certified Public Accountants issued Statement on Auditing Standards 55 (SAS 55), Consideration of the Internal Control Structure in a Financial Statement Audit. SAS 55 states in part that "*Control procedures are those policies and procedures in addition to the control environment and accounting system that management has established to provide reasonable assurance that specific entity objectives will be achieved.*" Per SAS 55, one category of control procedures is "... *management review of reports that summarized the detail of account balances (for example, an aged trial balance of accounts receivable), and user review of computer generated reports.*" Neither the City of San José nor Santa Clara County are receiving management reports to evaluate the effectiveness of the traffic citation collection process.

## **The United States General Accounting Office (GAO)**

Additionally, in its September 1990 publication *Assessing Internal Controls in Performance Audits* the GAO discusses internal control standards.

*"The ultimate responsibility for good internal controls rests with management. Internal controls should not be looked upon as separate, specialized systems within an agency. Rather, they should be recognized as an integral part of each system that management uses to regulate and guide its operations. . . Good internal controls are essential to achieving the proper conduct of Government business with full accountability for the resources made available. They also facilitate the achievement of management objectives by serving as checks and balances against undesired actions. In preventing negative consequences from occurring, internal controls help achieve the positive aims of program managers."*



The City of San José's and Santa Clara County's controls over traffic citations do not meet these standards.

It should be noted that Santa Clara County's lack of management reports has been identified before. Specifically, in 1986, the Harvey Rose Accountancy Corporation (HRAC) made a Report to the Board of Supervisors of the Santa Clara County Review of the Operations of the Santa Clara County Municipal Court. Among other things, the HRAC report identified a lack of sufficient management reports. In April 1986, the judges of the Santa Clara County Municipal Court sent a written response to the HRAC report. The response was "...intended not as a point-by-point discussion of the auditors' findings but rather as a general statement of the judges' reactions and concerns with respect to the audit as a whole." The judges commented that:

*"...it makes little sense to batter the morale of people who work very hard to make the best of what they are given to work with. What is appropriate in our view, is a cooperative, step by step approach over a number of fiscal years to implement specific pieces of what is needed, with the expectation that today's investment will be recouped through more effective collection procedures and other efficiencies down the road. We proposed the formation of a joint working group for this purpose to consist of Board members, judges, Court administrators and the County Executive or her designate."*

As of November 1990, Santa Clara County was still not producing management reports that evaluate the effectiveness of its enforcement procedures.

**Santa Clara County, The State Of California,  
And City Of San José  
Enforcement Methods Are Ineffective**

Santa Clara County's traffic citation processing system relies on mailings to drivers as the primary means to clear citations. When drivers do not clear a

citation, the court uses driver's license holds and arrest warrants to enforce the citation. However, these enforcement methods are for the most part ineffective.

### **Mailings - Lack Of Valid Addresses**

The citation processing system relies on mailings to inform drivers of their options in clearing a citation. For example, Facility Courtesy Notices and SJPD warrant notifications are sent through the mail. Although Santa Clara County uses the most currently available addresses (as given by the initiating agency), many of the addresses are not valid. So, many of the notifications do not reach the defendants. Consequently, mailings are only marginally effective.

### **Driver's License Hold Controls Are No Longer Sufficient**

A driver's license hold refers to a DMV policy whereby the DMV will not renew a driver's license until all Failure to Appear or Failure to Pay holds are cleared. In an April 1986 Report To The Board Of Supervisors Of Santa Clara County Review Of The Operations Of The Santa Clara County Municipal Court, the HRAC stated that:

*"The use of driver's license holds has been in effect in Santa Clara County since about 1978...In theory, the driver's license hold procedures should be the most efficient and possibly the most effective means of enforcement...The concept of the driver's license hold was that through an existing administrative process of the Department of Motor Vehicles, persons who do not clear traffic citations would be automatically caught within the...cycle for renewal of the driver's license. This would save local law enforcement agencies the cost of issuing and serving arrest warrants...[However,] many have escaped through loopholes in the system...The actual experience has been that a significant percentage of citations go uncleared by drivers who*

*ignore notices from the courts and the Department of Motor Vehicles (DMV) and continue to drive with or without a valid license.”*

The ineffectiveness of DMV driver's license holds was also noted in a fall 1990 San Francisco television station (KRON-TV) broadcast. During this broadcast, reporter Mark Jones stated in part:

*“Officers all over the State say there is one single biggest frustration which they face - a driver's license doesn't mean anything anymore. California punishes repeat offenders by suspending their licenses. But there are hundreds of thousands of people with suspended licenses who are still driving. Jail time is rare. Jails are overcrowded with drug dealers, killers and rapists. State officials tell me that another 500,000 to 1,000,000 people are driving even though they have suspended licenses.”*

KRON-TV observed court proceedings at a traffic court in Concord, California. Of 121 driving on suspended license cases, 37 people showed up for court. According to KRON-TV, *“The drivers were all fined. Most were ordered to complete a work alternative program picking up trash. The sentences varied, but one explicit instruction never changed - They were ordered not to drive until their license is cleared up.”* KRON-TV filmed six of the offenders driving away from the courtroom after they had been told not to drive.

During the KRON-TV broadcast, Angelynn Gates, Contra Costa County Deputy District Attorney, replied to the question: **“Do you get outraged at this?”** by stating, *“It's hard to get outraged when you see it every day all the time. It's very frustrating to me. There's hundreds of them every week...But, the people who are driving under the influence, who are speeding, who are running red lights, are the same kind of people who are going to go out and drive even though they have no license.”*

### **Ineffective Arrest Warrant Enforcement**

The SJPD does not actively pursue defendants with an arrest warrant outstanding for traffic offenses. Upon receipt of the warrant from the Facility, the SJPD sends one notification to the offender, inputs the warrant into a computerized police network, and files the warrant. The SJPD only collects funds from those offenders who voluntarily clear their warrant. SJPD will not arrest an offender with an outstanding traffic citation unless SJPD 1) picks the offender up on another offense, 2) performs a computer check, and 3) becomes aware of the outstanding arrest warrant.

### **\$58 Million In Uncleared Traffic Citations**

In order to assess the financial consequences of traffic citation collection process inadequacies on the City of San José, we asked Santa Clara County to provide us with the dollar amounts of uncleared traffic citations. However, after repeated requests, Santa Clara County told us that such information did not exist and could not be produced on a timely basis. As a result, we had to resort to an extensive and time-consuming statistical sampling of Santa Clara County's microfiche records in order to estimate this basic management information.

### **Statistical Sample Results**

We reviewed uncleared traffic citations at the Facility located on Ruff Drive in San José. We selected this Facility because it processes almost all the traffic citations issued within San José's city limits. The Santa Clara County Municipal Court has four other traffic facilities located in Los Gatos, Palo Alto, Sunnyvale, and Gilroy. According to SJPD personnel, the number of San José traffic citations at these facilities is negligible.

The Facility has an alphabetical listing on microfiche of its uncleared moving citations. As of November 24, 1990, the Facility's microfiche contained 461,822 uncleared and closed traffic citations and some contested parking tickets. Intermixed with SJPd citations were some CHP, Milpitas, and City of Santa Clara citations, as well as a few college district citations.

By applying statistical sampling techniques to the 461,822 items shown above, we estimated with a 90 percent confidence level the following regarding the uncleared traffic citations at the Facility on November 24, 1990.

<u>Attribute</u>	<u>Statistically Estimated Value</u>	<u>Estimated Statistical Precision</u>
Number of Uncleared Traffic Citations	299,723	18,472
Average Citation Amount	\$232	\$12.76
Dollar Amount of Uncleared Traffic Citations	\$69,600,000	\$3,800,000

In addition, based upon our statistical sample, we estimated the age of the \$69,600,000 of uncleared traffic citations at the Facility to be as follows:

<u>Year Of Issuance</u>	<u>Amount</u>
1978	\$264,000
1979	264,000
1980	0
1981	508,000
1982	6,139,000
1983	5,116,000
1984	4,350,000
1985	3,835,000
1986	7,419,000
1987	8,185,000
1988	7,162,000
1989	7,677,000
1990	18,681,000
TOTAL	<u>\$69,600,000</u>

Based upon our statistical sample, about 70 percent of the uncleared Facility traffic citations were five years or less outstanding.

**Traffic Violators Owe  
The City Of San José  
An Estimated \$17 Million**

It should be noted that the City of San José is entitled to only a share of some of the traffic citations that make up the \$69,600,000 shown above. For example, some of the traffic citations in the \$69,600,000 were issued in other jurisdictions. For those citations, the City of San José does not receive any monies. We estimated the number of such citations at the Facility on November 24, 1990, to be 51,530 and that the value of these citations was \$11,955,000. Further, the remaining \$57,645,000 (\$69,600,000 less \$11,955,000) in uncleared traffic citations at the Facility on November 24, 1990, includes \$32,585,000 in penalty assessments that Santa Clara County and the State of California share but not the City of San José. As a result, if the remaining \$57,645,000 were collected, the distribution to the City of San José, Santa Clara County, and the State of California would be approximately as follows:

	<b><u>City Of San José</u></b>	<b><u>Santa Clara County</u></b>	<b><u>State of California</u></b>	<b><u>Total</u></b>
Penalty Assessments	\$0	\$15,038,000	\$17,547,000	\$32,585,000
SJPD Citations <sup>2</sup>	\$12,920,000	\$3,230,000	\$0	\$16,150,000
CHP Citations <sup>2</sup>	<u>\$4,455,000</u>	<u>\$4,455,000</u>	<u>\$0</u>	<u>\$8,910,000</u>
TOTALS	<u>\$17,375,000</u>	<u>\$22,723,000</u>	<u>\$17,547,000</u>	<u>\$57,645,000<sup>3</sup></u>

As shown above, we estimated that the City of San José's maximum share of the monies due on uncleared traffic citations at the Facility on November 24, 1990, was \$17,375,000. Further, we estimate that \$12,247,000 of the \$17,375,000 is five years or less outstanding.

**Basic Justice And Fairness Principles  
Are Undermined, And Unauthorized Drivers Continue To Drive**

An uncleared traffic citation has an impact on the offender, the criminal justice system, and the community. When the citation is not enforced, the offender may believe that he or she has successfully "beaten the system." Additionally, when someone beats the system, the integrity and credibility of the criminal justice system is impugned. The community may question the entire justice system to the extent it perceives traffic infraction enforcement as an important but ineffective means of rendering deserved punishment.

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<sup>2</sup> The City of San José receives 80% of the bail collected for citations the SJPD issues and 50% of the bail collected for citations the CHP issues. Of the uncleared citations potentially resulting in San José revenues, 64% were issued by SJPD and 36% by the CHP.

<sup>3</sup> This estimate includes some citations for which the Santa Clara County is entitled to the total amount for Failure to Appear and Failure to Pay violations. We were unable to estimate the amount of these citations.

## **Unauthorized Drivers**

In its fall 1990 broadcast, KRON-TV noted that the number of drivers who have never had a driver's license, or even taken a driver's license test, is growing. The DMV estimates that 1,000,000 people are driving on California streets who have never had a driver's license and that an additional 500,000 to 1,000,000 are driving on suspended licenses. KRON interviewed two CHP officers who estimated that one-third to one-half of the people arrested on California streets are driving without a valid license.

## **NATIONAL ENVIRONMENT - Fragmentation Of Accountability And Responsibility Between The City of San José, Santa Clara County, And The State Of California For Uncleared Citations**

The problem of unauthorized persons driving on public roads and the judicial system's failure to address it is not restricted to California. A Justice System Journal article entitled "The Growing Challenge of Fine Administration to Court Managers" noted the following general practices in fines and fine administration in the United States.

*"Accountability is generally lacking in American courts' administration of fines. Despite the widespread use of this penalty, responsibility for post-sentence fine administration is typically fragmented within and across a variety of agencies, including the court, probation, prosecution, police, marshals, and city attorneys. A major step in professionalizing fine administration, therefore, is for courts to make a single position responsible for the outcome of all fine sentences and for insuring that the fining process as a whole is rational and properly carried out...it is still rare for American courts to make one position fully accountable for the final outcome of fine sentences. Although the individuals involved in the many collection and enforcement tasks carried out by courts in the United States may do their jobs in a credible and competent manner, no one person typically has the authority or responsibility to make the entire process work properly from*



*beginning to end...no one will be held professionally accountable when it breaks down, as it inevitably does...effective strategies [for collection] should emphasize routine contact and notification, short terms for payment, and swift and personal reaction to nonpayment, with a steady progression of responses characterized by mounting pressure...As a last resort, however, fine administrators need the ability not only to issue arrest warrants (which occurs all too frequently now as a first rather than last resort), but also to physically return defaulting offenders to court (which is rarely done now because arrest warrants are overused in fine cases, and, therefore, are not given priority by law enforcement officials.)...Courts are placed in a very difficult position, however, when their capacity to carry out a central function or operation (such as fine enforcement) is dependent upon the resources of agencies they do not control. These agencies (such as police departments) have no essential organizational stake in the outcomes sought by the court. Whenever possible, therefore, courts should develop their own capacity to enforce fines with coercive means.”*

### **Additional Information And Enforcement Methods Are Needed**

#### **Licensed Collection Agencies**

Using a private licensed collection agency may be an effective means of increasing the collection rate on traffic offenses.

Collection agencies send contact letters, make personal contact, affect the defendant's credit rating, and sue the defendant. The agencies have access to a variety of directories which can be used to locate people. Per Fines Can Be Fine - and Collected by George F. Cole, Judges Journal, Winter 1989 “*These companies are able to pursue debtors across state lines and often have access to data bases that allow them to track offenders. Many collection agencies routinely notify credit bureaus of delinquent accounts. This fact is communicated to the offender and seems to be a major element in recovering overdue fines.*”

A spring 1988 Justice System Journal article entitled Evaluating Three Notification Strategies for Collecting Delinquent Traffic Fines detailed a study the Court Administrator for Evergreen District Court, Snohomish County, Washington, performed that compared three collection methods: court-generated delinquency notices, a third party billing service, and a licensed collection agency. These methods were compared to the net revenues collected. The article states in part that:

*“The court concluded that the licensed collection agency was the most successful in obtaining payment. Its success is attributed, at least in part, to the strategy of using both multiple letters and personal notifications...The collection agency method - two sequential notification letters followed by a personal follow-up call - was the most effective method of collecting potential revenue...The local collection agency was modest in absolute cost...and it resulted in the highest net revenues...The collection agency method was the most effective in obtaining full fine payments from traffic offenders and thus in securing the highest level of compliance with the court’s financial orders.”*

The Evergreen District Court initiated the study to improve their collections because not to do so *“violated basic justice and fairness principles and undermined the court’s credibility by encouraging people to disregard their obligations to the court.”*

We contacted the Court Administrator for Evergreen District Court, Snohomish County, Washington, in February 1991. We were told that *“Net revenues have exceeded court costs since implementing the licensed collection agency program.”* Also, on November 14, 1990, Snohomish County issued a report which said:

*“Over \$2 million in unpaid court fines have been collected to-date through an innovative two-year old Snohomish County program which employs a private collection agency to go after scofflaws. Using only telephone calls and letters, the private*

*agency first pursued almost 20,000 past due district court debts, mostly traffic fines, collecting over \$1 million on accounts dating back to 1983...The collection agency does not become involved in the recovery process here until all regular court efforts to collect past due fines have been exhausted.”*

Additionally, we learned that Kansas City, Missouri, uses a licensed collection agency to collect fines imposed for a variety of crimes including moving violations, parking violations, petty theft, littering, and prostitution. The court allows 45 days for court processing plus a 90-day wait period before turning accounts over to the collection agency. The agency provides mailing and telephone contact services. The agency collects about 20 to 25 percent of the amounts turned over and keeps about 18 percent of collections for its fee.

### **Telemarketing**

A winter 1989 Judges Journal article Fines Can Be Fine - and Collected noted that:

*“The telephone is one of the major instruments private businesses use to remind customers that installment payments are due. Some courts have found that fine collection can be enhanced either by using their own employees or by contracting with private telemarketing firms for such reminder services...The Tacoma (Washington) Municipal Court has used a private telemarketing firm since 1984. Payment in full has been received from 20 percent of all cases assigned to the company. During the first two years of experience with this technique the court realized \$375,000 in revenue at a cost of \$26,000, a figure equal to seven percent of the amount received. The court is now moving to the use of a private, licensed collection agency in the belief that this approach will be even more cost effective.”*

**The City Of San José Could Realize An Additional \$2,720,000,  
And The Number Of Unauthorized Drivers  
On California Streets Could Be Reduced**

**Licensed Collection Agencies**

If Santa Clara County used licensed collection agencies to pursue uncleared traffic citations, we estimate the City of San José could realize an additional \$3,400,000 in traffic citations revenues. This revenue would be offset by about \$680,000 in collection agency costs.

Our collection estimate is based on results in Snohomish County, Washington, which indicate that about 30 percent of court accounts turned over to a collection agency are collected. Also, our estimate is based on Santa Clara County turning over only those outstanding citations that are five years or less outstanding and assumes a 60-day allowance for court processing. We estimated collection agency costs at 20 percent of collections. Our estimate is based upon information the Court Administrator for Snohomish County provided and upon the Kansas City, Missouri, experience with collection agencies. It should be noted that the use of collection agencies to collect uncleared traffic citations may require the California State Legislature to pass enabling legislation. If such legislative action is needed, Santa Clara County and the City of San José should actively work with the State Legislature and the governor's office to secure the passage of any necessary enabling legislation.

**Pro-active Enforcement Program For Chronic Violators**

According to the SJPd, they do not pro-actively enforce traffic citation arrest warrants. However, our review revealed that it could be cost effective for the SJPd to enforce arrest warrants on certain chronic violators. These are defendants who have several citations outstanding. The SJPd has no special pro-active enforcement policies for these scofflaws.

During our audit, we examined a judgmental sample of 3,333 uncleared moving citations. Of these 3,333 citations, 1508 citations were issued to 548 offenders who had two or more uncleared citations. These 548 offenders had outstanding citations valued at \$390,572, or an average of \$713 per offender.

Additionally, we noted the following regarding these 548 offenders:

<b><u>Number Of Offenders</u></b>	<b><u>Number Of Uncleared Citations Per Offender</u></b>	<b><u>Total Amount Owed</u></b>	<b><u>Average Amount Owed Per Offender</u></b>
334	2	\$173,012	\$518
115	3	89,355	777
45	4	46,620	1,036
29	5	37,555	1,295
13	6	20,202	1,554
7	7	12,691	1,813
3	8	6,216	2,072
1	9	2,331	2,331
<u>1</u>	10	<u>2,590</u>	2,590
<u>548</u>		<u>\$390,572</u>	

As shown above, only 99 of the 548 chronic violators in our sample owed more than \$1,000. Thus, it appears that a SJPD policy to pro-actively enforce traffic citation arrest warrants for chronic violators who owe more than a specified amount, such as \$1,000, could produce cost effective results for the SJPD, an estimated \$1,900,000 in additional gross revenues for the City of San José and renewed regard for the criminal justice system. To some degree, these revenues would be offset by the costs of serving the arrest warrants. These costs include officers' salaries, fringe benefits, overhead, and Santa Clara County booking charges. These costs might be mitigated if the City Manager requests that Santa Clara County reduce or eliminate its booking charge when the SJPD arrests a chronic offender. In this way, the County would be recognizing the SJPD's

increased efforts that will increase City of San José, Santa Clara County, and State of California revenues.

*Courts Should Hear All Outstanding Traffic Citations  
When Hearing Suspended License Charges*

Many chronic violators will eventually incur a driving on a suspended license charge. When the defendants appear in municipal court on a driving with a suspended license charge, the judge hears the suspended license charge and the traffic citation which initiated the suspended license charge. However, the court does not hear and resolve prior outstanding traffic citations at the same time. Instead, the defendant must make a separate court date to appear at the Facility in order to clear the prior outstanding traffic offenses. In our opinion, the municipal court, to the extent possible, should hear all of an offender's uncleared traffic citations when it hears a driving with a suspended license charge. This change in policy could also produce additional revenues for the City of San José, Santa Clara County, and the State of California.

**Additional Collection Methods  
Other Jurisdictions Are Using**

*Work Alternative Programs*

The City of Phoenix, Arizona, offers work alternative and community service programs to indigent offenders. About 700 offenders sign up for the work alternative program each month. The City of Phoenix does not have statistics on the number of offenders enrolled in community service programs.

### Amnesty Program

In 1986, the South County Municipal Court, Laguna Niguel, Orange County, offered an amnesty program for traffic offenders. The amnesty lasted for about one month. It included moving traffic infractions (such as speeding or running a stop sign) but did not extend to misdemeanors (such as driving on a suspended license or driving under the influence). The offer was extended only for cases which had a warrant outstanding. The court dismissed the failure to appear charge and the associated fine. Thus, offenders were able to clear a citation by paying the basic charges. The court cleared 1,007, or about 20 percent, of the 5,000 outstanding warrants. The court felt the program was successful.

### Confiscation

The fall 1990 KRON-TV news broadcast stated that in Manitoba, Canada, drivers, especially those with DUIs and suspended licenses who are caught driving again, have their cars confiscated and sold.

In January 1991, we interviewed the KRON-TV reporter and were told that the CHP briefed Governor Wilson's Office on the driver's license issues noted in the fall 1990 KRON-TV news broadcast. State Senator Lockyer is proposing legislation which requires *"a court to order the impoundment, for 60 days, of a vehicle operated by a person convicted of driving while his or her driver's license is suspended or revoked for a [DUI] conviction."*

## **CONCLUSION**

Our review revealed that, as of November 1990:

- The City of San José, Santa Clara County, and the the State of California were owed an estimated \$58 million from traffic tickets issued within San José's city limits;
- The City of San José's share of uncleared citations was an estimated \$17 million; and
- Current collection process inadequacies undermine basic justice and fairness principles and allow people to drive on California streets who are not authorized to do so.

The cause of this situation is that the City of San José has not received adequate information regarding traffic citation monies due to it. Further, Santa Clara County, the State of California, and City of San José's enforcement methods, such as driver's license holds and arrest warrants, are for the most part ineffective. We believe that the City of San José could collect an additional \$2,720,000 through the use of a licensed collection agency. Additionally, by serving arrest warrants on chronic violators, the City of San José could realize an additional \$1,900,000 and basic justice and fairness principles would be better served.



## **RECOMMENDATIONS:**

We recommend that the City Manager:

### **Recommendation #1:**

Request that Santa Clara County use licensed collection agencies to collect monies due from uncleared citations. In addition, the City of San José and Santa Clara County should work with the California State Legislature and governor's office to secure the passage of any necessary enabling legislation. (Priority 1)

### **Recommendation #2:**

Request that Santa Clara County evaluate the merits of an amnesty program to encourage offenders to clear their citations. (Priority 1)

### **Recommendation #3:**

Request that Santa Clara County Municipal Court, to the extent possible, hear all of an offender's uncleared traffic citations when it hears a driving with a suspended license charge. (Priority 1)

### **Recommendation #4:**

Recommend to Santa Clara County that it implement work alternative programs and community service hours programs to assist indigent offenders in clearing their citations. (Priority 2)

**Recommendation #5:**

Request that Santa Clara County provide regular and periodic management reports that update the status of unpaid citations collection and enforcement and provide relevant data on trends and problems. (Priority 3)

**Recommendation #6:**

Recommend that Santa Clara County designate one person to monitor and oversee the citation clearing process. (Priority 3)

**Recommendation #7:**

Designate a City of San José employee to monitor the City's collection of traffic fines. (Priority 3)

**Recommendation #8:**

Work with the League of California Cities to support legislation which would: 1) allow more offenses to be heard at the Traffic Court Facility instead of at the municipal court, and 2) impose more stringent penalties against persons driving on suspended licenses or without licenses. (Priority 3)

In addition, we recommend that the San José Police Department:

**Recommendation #9:**

Serve arrest warrants for those chronic offenders with uncleared traffic citations above a specified dollar amount. (Priority 1)

Further, we recommend that the City Manager:

**Recommendation #10:**

Request Santa Clara County to reduce or eliminate the booking charges for serving arrest warrants on chronic offenders in recognition of the SJPd's increased efforts that will increase City of San José, Santa Clara County, and the State of California revenues. (Priority 1)

## **FINDING II**

### **SANTA CLARA COUNTY MUNICIPAL COURT ASSIGNMENTS OF FIRST-TIME DUI OFFENDERS TO FORMAL PROBATION OVERBURDEN THE COUNTY'S PROBATION OFFICE AND COST THE CITY OF SAN JOSÉ AN ESTIMATED \$500,000 PER YEAR IN FINES**

California State law prescribes how the State of California, Santa Clara County, and the City of San José share in Driving Under the Influence (DUI) fines resulting from arrests made within San José's city limits. A critical distinction in the State Code pertains to whether the county courts assign a defendant convicted of DUI to formal versus court probation. Specifically, when the courts assign a defendant convicted of DUI to court probation, the City of San José receives a share of the fine. However, when the courts assign a defendant convicted of DUI to formal probation, Santa Clara County keeps that portion of the fines that would otherwise go to the City of San José. Our review of court versus formal probation for persons convicted of DUIs revealed that unlike other surrounding counties, the Santa Clara County Municipal Court assigns a significant number of first-time DUI offenders to formal probation. As a result, Santa Clara County's adult probation caseload per 10,000 population is the highest in the State of California, and the City of San José loses about \$500,000 per year in DUI fines. This loss of revenue is exacerbated by the fact that the City of San José incurs significant costs associated with DUI arrests. While these City of San José DUI arrests generate about \$1.5 million per year for Santa Clara County and the State of California, the City receives no recompense for the estimated \$450,000 per year it spends to make these arrests. Other California cities and counties have entered into agreements regarding the sharing of first-time misdemeanor DUI fines. By entering into a similar agreement with Santa Clara County, the City of San José would receive a more equitable share of DUI fines without challenging the Santa Clara County Municipal Court's judicial discretion regarding court versus formal probation.

**California State Law Prescribes  
How DUI Fines Are Divided  
Between the State Of California,  
Santa Clara County, And City Of San José**

Unless amended by mutual agreement, the State of California Penal Code Section 1463 authorizes the distribution of traffic citation fines and forfeitures between California cities and counties. On July 8, 1983, Santa Clara County and the City of San José entered into an agreement that allowed the Santa Clara County Department of Revenue to deduct the County's actual processing costs from the total payments received for court-ordered accounts receivable and to distribute a percentage of the remaining balance to the City of San José.

The Santa Clara County Municipal Court has the option of assigning a defendant convicted of a traffic violation to either "formal" probation or "court" probation. The Santa Clara County Probation Department administers "formal" probation while the County Municipal Court administers "court" probation. As a condition of probation, the court orders persons placed on either formal or court probation to pay various sums of money. These payments fall into one of four categories: fines, penalty assessments, fees, and victim restitution.

Fines are the punishment for committing a crime; whereas, penalty assessments are state statute prescribed amounts that are added to fines. In Santa Clara County, the primary penalty assessments are the state penalty assessment and county penalty assessments for the Court and Jail Construction Funds. Presently, in Santa Clara County, penalty assessments are 130 percent of fine amounts. For example, a fine of \$400 has a penalty assessment of \$520 ( $\$400 \times 130\% = \$520$ ). Of this 130 percent, the state portion is 70 percent and the county portion is 60 percent ( $70\% + 60\% = 130\%$ ).

The State Penal Code also allows counties to charge fees in order to recover some of their costs of providing various services. The last category of fines relates to victim restitution which is imposed, when possible, to require persons convicted of certain offenses to repay the victims of their offense.

The Santa Clara County Department of Revenue collects monies for both formal probation accounts under the jurisdiction of the County's Probation Department and court probation accounts under the jurisdiction of the Santa Clara County Municipal Court. However, as far as the City of San José is concerned, the assignment of a person convicted of an offense to formal or court probation has a significant effect on City of San José revenues. Specifically, in the case of court probation, the City of San José receives 80 percent of the net fine amount. However, when a person is assigned to formal probation, Santa Clara County keeps the 80 percent of the fine that would otherwise go to San José.

**Unlike Surrounding Counties,  
The Santa Clara County Municipal Court  
Assigns A Significant Number Of First-Time  
DUI Offenders To Formal Probation**

As was noted above, court assignments to formal versus court probation have a significant revenue implication for the City of San José. Accordingly, as part of our audit, we reviewed Santa Clara County Municipal Court assignments of DUI offenders to formal versus court probation. Our review revealed that, unlike surrounding counties, Santa Clara County assigns a significant number of first-time DUI offenders to formal probation. Specifically, we compared Santa Clara County's DUI formal versus court probation assignment practices to those of other California counties. The results of our comparison are shown below.

<u>County</u>	<b>As A General Practice, Does The Municipal Court Assign First-Time DUI Offenders To Formal Probation</b>
Santa Clara	Yes
San Francisco	Yes
Contra Costa	No
Los Angeles	No
Alameda	No
Sacramento	No
Riverside	No
Orange	No
San Diego	No
Santa Barbara	No

Of the counties shown above, only Santa Clara County and San Francisco County Municipal Courts assign first-time DUI offenders to formal probation. However, in San Francisco, the county and city governments are combined. Therefore, municipal court assignments to formal or court probation have no revenue consequences for either entity.

During our audit, we were unable to determine what percent of first-time DUI offenders the municipal courts assign to formal probation. However, the following statistics clearly demonstrate that the courts assign a significant number, if not all, first-time DUI offenders to formal probation.

- During 1989, the Santa Clara County Municipal Court placed 8,972 persons on formal probation. Of that number, we estimate 74 percent were DUI convictions of which 47 percent were first-time DUI convictions. Thus, the Santa Clara County Municipal Court placed an estimated 3,120 persons convicted of first-time DUIs on formal probation in 1988;

- During 1989-90, the average monthly number of first-time DUI offenders on formal probation in Santa Clara County was 7,637; and
- There were 6,953 first-time DUI offenders on formal probation in Santa Clara County during August 1990.

**Santa Clara County's Adult Probation Caseload  
Per 10,000 Population Is The Highest In The State Of California**

Santa Clara County Municipal Court assignments of first-time DUI offenders to formal probation overburden the County's Probation Department. This conclusion was reached in an August 1990 HRAC report on an audit of the Santa Clara County Probation Department. Among other things, this audit report stated that of nine other California counties, Santa Clara County had the highest adult formal probation caseload per 10,000 population by far and was second only to Los Angeles County in the total number of adults on formal probation. TABLE II summarizes the adult formal probation caseloads per 10,000 population as reported in the August 1990 audit report.



**TABLE II**  
**SUMMARY OF SELECTED COUNTY FORMAL PROBATION**  
**CASELOADS**  
**PER 10,000 POPULATION AS OF DECEMBER 31, 1988**

Formal Probation Caseloads <u>Per 10,000 Population</u>				
<u>County</u>	<u>Superior Court Assignments</u>	<u>Municipal Court Assignments</u>	<u>Total</u>	<u>Total Formal Probation Assignments</u>
Santa Clara	50.82	137.24	188.06	27,097
San Francisco	63.40	80.99	144.39	10,565
Alameda	47.79	46.60	94.39	11,822
Contra Costa	25.51	64.82	90.33	7,005
Sacramento	61.98	27.72	89.70	8,865
San Diego	48.84	9.69	58.53	14,154
Orange	26.71	22.06	48.77	11,121
Riverside	22.84	24.17	47.01	4,771
San Bernardino	31.59	8.61	40.20	5,325
Los Angeles	30.00	48.34	78.34	67,771

As shown above, Santa Clara County's adult formal probation caseload is inordinately high. Further, municipal court assignments to formal probation are clearly out of line with the other counties. This is relevant in view of the fact that the municipal court, not the Superior Court, assigns DUI cases to either formal or court probation. Thus, it appears that Santa Clara County's inordinate adult formal probation caseload is largely a function of a predisposition on the part of the municipal court to assign first-time DUI offenders to formal probation. Specifically, we estimate that first-time DUI offenders comprise about 51 of the 137 Santa Clara County Municipal Court assignments to formal probation shown above. Eliminating those 51 formal adult probation assignments would bring Santa Clara County Municipal Court's formal adult probation assignments down to about 86. While this figure is still relatively high, it is certainly more in line with the other counties shown in TABLE II.

It should be noted that the August 1990 HRAC report on the audit of the Santa Clara County Probation Department used the 1988 Criminal Justice Profile from the Bureau of Criminal Statistics (BCS). We also obtained the most current data available, namely the 1989 BCS tables, showing the adult probation caseload activity for all California counties. As of December 31, 1989, Santa Clara County's adult probation active caseload of 28,939 was the second highest in the State of California. The five California counties with the highest adult probation active caseloads were:

Los Angeles	71,826
Santa Clara	28,939
Fresno	15,945
San Joaquin	15,685
San Diego	15,123

As shown above, Los Angeles County has an adult probation caseload that is about two and one-half times Santa Clara County's caseload. However, when one considers that the population of Los Angeles County is six times that of Santa Clara County, the relatively high adult probation caseload in Santa Clara County is again evidenced.

Another consequence of the large number of municipal court assignments of first-time DUI offenders to formal probation is that it diminishes a county probation officer's span of control over his or her formal probationers. Specifically, in June 1990, the Santa Clara County Probation Department reported the following:

<b>Number of Santa Clara County Probation Officers</b>	9.50
<b>Number of DUIs On Formal Probation</b>	14,962
<b>Average Number of DUIs On Formal Probation Per Probation Officer</b>	1,574.9

Regarding this issue, the August 1990 HRAC report on the audit of the Santa Clara County Probation Department stated in part that:

*“ . . . the overriding mission of the Probation Department is to protect the community. This mission is accomplished through investigation, supervision, and custodial care of adults and juveniles referred by the courts for probation services.”*

To place the above comment into perspective, we estimate that if first-time DUI offenders were not assigned to formal probation, the average Santa Clara County probation officer would no longer have to investigate, supervise, or accept custodial care over nearly 800 probationers. While first-time DUI offenders may not receive much in the way of probation officer attention or service, it seems reasonable to assume that reducing the average probation officer's caseload by 800 persons would, at least marginally, improve the average probation officer's span of control over those persons who really need Santa Clara County Probation Department services or attention.

**Municipal Court Assignments  
Of First-Time DUI Offenders  
To Formal Probation Cost  
The City of San José About \$500,000 Per Year**

As was noted earlier, when a person convicted of DUI within San José's city limits is assigned to court probation, the City of San José receives 80 percent of the fine. However, if that same person is assigned to formal probation, Santa Clara County keeps that portion of the fine that would otherwise go to the City of San José. We estimate that municipal court assignments of first-time DUI offenders to formal probation cost the City of San José about \$500,000 per year in DUI fines.

Our \$500,000 per year estimate is based upon two calculations. First, we estimated the City of San José's lost DUI fines because of first-time offender assignments to formal probation at \$400,000 per year assuming the following:

- Municipal court assignments to formal probation at 9,000 per year;
- DUI assignments to formal probation at 74 percent of total municipal court assignments to formal probation;
- First-time DUI offenders at 47 percent of all DUI assignments to formal probation;
- The City of San José at 51 percent of county-wide DUI convictions; and
- An average net DUI fine of \$280.

Next, we estimated the City of San José's lost DUI fines because of first-time offender assignments to formal probation at \$650,000 per year assuming the following:

- Santa Clara County revenues from DUI adult probation payments at \$7.1 million per year;
- Percent of such revenues subject to distribution to the City of San José at 38 percent;
- First-time DUI offenders at 47 percent of all DUI assignments to formal probation; and
- The City of San José at 51 percent of county-wide DUI convictions.

Based upon the above calculations, we estimate that first-time DUI assignments to formal probation cost the City of San José about \$500,000 per year.

It should be noted that the Santa Clara County Board of Supervisors approved an ordinance on January 29, 1991, regarding probation fees. The ordinance established the following probation fees subject to the probationer's ability to pay for:

Municipal Court pre-sentence reports	\$150.00 per report
Superior Court pre-sentence reports	\$240.00 per report
Probation Supervision	\$15.00 per month

It is significant that the Santa Clara County Board of Supervisors did not approve the above fees until January 1991. The significance of that date lies in the fact that in 1989 the California Legislature passed Assembly Bill (AB) 1263 which required all California counties to impose probation fees effective January 1, 1990. Thus, for more than one year, Santa Clara County was not imposing the probation fees AB 1263 required.

In our opinion, Santa Clara County's failure to take advantage of the revenue generating potential of AB 1263 in a timely manner is inconsistent and rather ironic. On the one hand, Santa Clara County has apparently assigned first-time DUI offenders to formal probation in order to maximize county revenues at the expense of the City of San José. However, at the same time, Santa Clara County failed to collect probation fees that were not only in the County's best interest from a revenue standpoint but required by state law as well.

**The City Of San José  
Incurs Significant Costs For DUI Arrests  
But Receives No Recompense For Its Costs**

The \$500,000 per year in revenues we estimate the City of San José loses because of municipal court assignments of first-time DUI offenders to formal probation is exacerbated by the fact that the City incurs significant costs when making first-time DUI arrests. While those City of San José first-time DUI arrests generate about \$1.5 million per year in revenues for Santa Clara County and the State of California, the City receives no recompense for its costs. We estimate the City of San José's costs for these first-time DUI arrests to be \$450,000 per year.

In order to assess the cost to the City of San José from first-time DUI offender arrests, we asked the SJPD to estimate the cost of DUI arrests. According the SJPD, arrests cost the City of San José \$279 as follows:

<b>SJPD Officer Time</b>	<b>\$172<sup>4</sup></b>
<b>Santa Clara County Booking Charge To The City of San José</b>	<b><u>107</u></b>
<b>TOTAL COSTS</b>	<b><u>\$ 279</u></b>

In 1989, SJPD filed 3,076 DUI complaints. Assuming that half of these DUI complaints were first-time offenders, we estimate the cost to the City of San José for these arrests in 1989 was about \$430,000.

Another less direct cost to the City of San José resulting from first-time DUI arrests is how Santa Clara County treats the \$30 installment fees it collects from those persons who are placed on probation and who elect to pay their fines in installments. Specifically, Santa Clara County treats these \$30 installment fees as follows:

- **Court Probation.** The installment fees are used to reduce Santa Clara County's costs to process court-ordered accounts receivable.

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<sup>4</sup> This amount excludes the officer's court appearance time.

- **Formal Probation.** The installment fees are placed and retained in Santa Clara County's General Fund.

The significance of the above distinction regarding installment fees is that Santa Clara County passes on a portion of its accounts receivable processing costs to the City of San José. Therefore, to the extent Santa Clara County's processing costs are reduced by the installment fees it collects from first-time DUI offenders placed on court probation, the City of San José share of those costs would be reduced accordingly. Conversely, when the municipal court places first-time DUI offenders on formal probation, the associated installment fees Santa Clara County collects are not offset against the County's costs to process court-ordered accounts receivable. Thus, when first-time DUI offenders are placed on formal probation and elect to pay their fines in installments, the City of San José ends up losing revenue.

Santa Clara County's recordkeeping system does not identify installment fee collections by type of offense or city of origin. However, based upon installment fee collections during 1988-89 and 1989-90, we estimate that the City of San José loses about \$20,000 per year because of Santa Clara County's treatment of first-time DUI offender installment fees.

**Other California Cities And Counties  
Have Entered Into Agreements  
Regarding The Sharing Of DUI Fines**

In the last ten years, law enforcement agencies have placed added emphasis on arresting and prosecuting suspected DUIs. In addition, the State Legislature and local jurisdictions have increased DUI fines and penalties. These circumstances are at least partly responsible for recent disputes between several California counties and the cities within their boundaries regarding the distribution of traffic fines. Some of the counties where disputes have occurred include: Alameda, Contra Costa, Los Angeles, Sacramento, San Bernardino, Shasta, Stanislaus, and Ventura.

In 1986-87, the San Bernardino County Grand Jury investigated the county court sentencing practices. The investigation addressed the court's practice of placing defendants on formal probation in what appeared to be a "scheme" designed to gather revenue for San Bernardino County and circumvent State Law 1463 of the Penal Code dealing with the cities' portion of fine revenues. The Grand Jury's report stated that *" . . . a significant problem exists in the equitable distribution of traffic fines, forfeitures and assessments between the incorporated cities of San Bernardino and the County General Fund. This problem has recently escalated because of the increased emphasis on drunk driving citations (DUIs). Many cities have increased their traffic enforcement units only to find that their share of fine monies decreased while the County's share increased. . . "*

In another instance, the cities in Stanislaus County entered into a joint powers agreement for the purpose of jointly resolving the cities' concerns regarding Stanislaus County's allocation and distribution of fine and forfeiture revenues.



Finally, the City of Sacramento initiated a lawsuit against Sacramento County regarding the County's distribution of traffic citation fines. To resolve all issues and claims, the City and the County of Sacramento entered into a contractual agreement in November 1982 relating to the distribution of municipal court fines. This agreement had the following provisions:

- *“Past Fines. In full settlement...the County shall pay Three Million Dollars (\$3,000,000) to the City in five (5) equal annual payments, with interest commencing November 15, 1982, on unpaid principal at the rate of 7 percent (7%) per annum.”*
- *“Future Fines...all Municipal Court fines, including formal probation cases, [emphasis added] collected by either the Municipal Court or the County Office of Revenue Reimbursements or any other County collection facility on and after July 1, 1982, if based on arrests by the City Police Department within the boundaries of the City, shall be divided seventy-four percent (74%) City/twenty-six percent (26%) County and, if based on arrests by the California Highway Patrol within the boundaries of the City, shall be divided forty-five percent (45%) City/fifty-five percent (55%) County.”*

In our opinion, the City of San José should pursue an agreement with Santa Clara County similar to those other California cities have made with their respective counties regarding the distribution of first-time offender DUI fines. By so doing, the City of San José would receive a more equitable share of DUI fines without challenging the Santa Clara County Municipal Court's judicial discretion regarding court versus formal probation. We estimate that if the City of San José and Santa Clara County had an agreement similar to that between the City and the County of Sacramento, the City of San José's revenues would increase about \$420,000 per year, calculated as follows:

Fines From First-Time	
DUI Offenders Assigned to Formal Probation	\$475,000
Less Other Traffic Citation Fines	
At 75% Instead of 80% <sup>5</sup>	<u>&lt;55,000&gt;</u>
Net City of San José	
Revenue Gain Per Year	<u>\$420,000</u>

## **CONCLUSION**

Our review of court versus formal probation for persons convicted of Driving Under the Influence (DUI) revealed that, unlike other surrounding counties, the Santa Clara County Municipal Court assigns a significant number of first-time DUI offenders to formal probation. This costs the City of San José approximately \$500,000 annually. This loss of revenue is exacerbated by the fact that the City of San José incurs costs of approximately \$450,000 annually in connection with these DUI arrests that generate about \$1.5 million per year for Santa Clara County and the State of California. Other California cities and counties have entered into agreements regarding the sharing of DUI fines. By entering into a similar agreement with Santa Clara County, the City of San José would receive a more equitable share of DUI fines without challenging Santa Clara County Municipal Court's judicial discretion regarding court versus formal probation.

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<sup>5</sup> Penal Code 1463 authorizes the City of San José to receive 87% of fines and forfeitures. However, since 1978, the City of San José has received 80% under the terms of an agreement with Santa Clara County which terminated June 30, 1990. Furthermore, unlike the City/County of Sacramento agreement, San José's agreement with Santa Clara County allows the county to charge the City of San José a processing fee. In 1990, these processing charges amounted to about \$250,000.

## **RECOMMENDATION**

We recommend that the City Manager:

### **Recommendation #11:**

Initiate negotiations with Santa Clara County regarding a consistent City/County sharing of first-time offender DUI fines regardless of municipal court assignment to court or formal probation. Should the City of San José and Santa Clara County fail to agree to such a sharing arrangement, then the City Manager should consult with the City Attorney's office regarding possible legal remedies. (Priority 1)

### **FINDING III**

**THE CITY OF SAN JOSÉ SHOULD PURSUE  
COLLECTING AS MUCH AS \$1,070,000  
IN TRAFFIC FINES THAT  
SANTA CLARA COUNTY COLLECTED  
FROM JULY 1983 TO DECEMBER 1990  
BUT DID NOT REMIT TO THE CITY**

California Penal Code Section 1463 prescribes how California cities and counties share in traffic fine monies. For the City of San José and Santa Clara County, Penal Code Section 1463 prescribes a pro rata sharing of 87 percent to the City and 13 percent to the County. In September 1977, the City of San José and Santa Clara County entered into an agreement to reduce the City's share of traffic fine monies from 87 percent. Depending on how one interprets the 1977 agreement, the City of San José's share of traffic fine monies should have reverted back to 87 percent in either 1983, 1987, or at the very latest July 1, 1990. As a result, the City of San José is entitled to as much as \$1,070,000 in additional traffic fine monies. Because the City of San José and Santa Clara County have not resolved this issue after approximately nine months of negotiations, the City should pursue available legal remedies.

#### **The 1977 Agreement**

Unless amended by mutual agreement, Penal Code 1463 authorizes the following distribution of the fines and forfeitures between the City of San José and Santa Clara County:

City of San José	87%
Santa Clara County	<u>13%</u>
TOTAL	<u>100%</u>

On September 15, 1977, Santa Clara County and the City of San José entered into an Agreement Adjusting Percentage Distribution of Fines and Forfeitures--Penal Code Section 1463. The City of San José and Santa Clara County entered into the agreement to enable the County to automate the traffic citation administration in the San José-Milpitas Municipal Court for both moving citations and parking citations. Santa Clara County planned to undertake the implementation in two phases:

1. Implement a moving traffic citation system in the San José-Milpitas Municipal Court by July 1, 1978; and
2. Implement a parking citation system in the San José Municipal Court by July 1, 1979.

The September 1977 agreement authorized the following adjustments to the Penal Code 1463 percentages:

For the period beginning July 1, 1977, and ending June 30, 1978, the distribution was:

City of San José	75%
Santa Clara County	<u>25%</u>
Total	<u>100%</u>

For the period beginning July 1, 1978, to June 30, 1987, the distribution was:

City of San José	80%
Santa Clara County	<u>20%</u>
Total	<u>100%</u>

Thus, based on the September 1977 agreement, the City of San José was authorized effective July 1, 1987, to revert back to the Penal Code 1463 percentages of 87 percent to the City and 13 percent to Santa Clara County.

With regard to the City of San José's agreements with Santa Clara County, two matters are noteworthy:

- a. No other city in Santa Clara County entered into a separate agreement in 1977 to amend the Penal Code 1463 percentages to be more favorable to the County for processing traffic citations; and
- b. The City of San José hired a private contractor, Datacom Systems, Inc., in September 1980 to process parking citations.

### **The 1983 Agreement**

On July 8, 1983, Santa Clara County and the City of San José entered into the Third Amendment to Agreement Adjusting Percentage Distribution of Court Ordered Accounts Receivable Under Penal Code Section 1463. This agreement allowed the Santa Clara County Department of Revenue to deduct the actual processing costs from the total payments received for court-ordered accounts receivable. The distribution of the remaining balance would then be:

City of San José	80%
Santa Clara County	<u>20%</u>
Total	<u>100%</u>

In 1983, all cities in Santa Clara County entered into a separate but similar agreement with the County authorizing the above distribution percentages for collections of court-ordered accounts receivable. The July 8, 1983, agreement between the City of San José and Santa Clara County had the following provision:

*“This agreement modifies Section 1463 only as to the distribution of collected fines and forfeitures from court ordered accounts receivable. Other fines and forfeitures collected, including but not limited to moving citations, shall be distributed as provided by Section 1463 as then in effect.”*

The City Attorney's Office has interpreted the above provision, as written, to mean that effective July 8, 1983, the correct percentage allocation between the City of San José and Santa Clara County for California Vehicle Code violations and city misdemeanors should have been 87 percent (City) and 13 percent (County). According to the City Attorney's Office, the 1983 agreement amended the 1977 agreement. On July 1, 1990, the City Finance Department sent a letter to the Santa Clara County Controller requesting that the County reimburse the City of San José for the funds overwithheld. The Finance Department requested Santa Clara County to reimburse the City of San José \$999,982. This amount represented the 7 percent difference between the Section 1463 percentage of 87 percent and the 80 percent actually used from July 8, 1983, through April 30, 1990. Extending that difference through December 31, 1990, produces a total of \$1,071,750.

It should be noted that the \$1,071,750 figure noted above assumes that the 1983 agreement amended the 1977 agreement. Another argument can be made that the September 1977 agreement adjusted the percentage distribution of fines and forfeitures for the period July 1, 1977, through June 30, 1987. In that case, the Section 1463 percentages of 87 percent (City) and 13 percent (County) would not have been in effect until July 1, 1987. Under this scenario, Santa Clara County would owe the City of San José \$436,345.

State Penal Code Section 1463 percentages are in effect unless amended by mutual agreement. In its June 1, 1990, memorandum, the City Finance Department advised the Santa Clara County Controller that the agreement between the City of San José and Santa Clara County for court-ordered accounts receivable would not be renewed. Thus, effective July 1, 1990, there was no agreement between the City of San José and Santa Clara County amending the

Penal Code Section 1463 percentages. However, Santa Clara County has continued to remit traffic citation fines to the City of San José using the 80/20<sup>6</sup> distributions percentages for the City and the County, respectively.

## **CONCLUSION**

The California Penal Code prescribes how California cities and counties share in traffic fine revenues. For the City of San José and Santa Clara County, the Penal Code prescribes a ratio of 87 percent to the City and 13 percent to the County. In 1977 and 1983, the City of San José agreed to reduce its share of the traffic fine revenues to enable Santa Clara County to automate its traffic citation administration and pay for actual processing costs. However, depending on the interpretation of the agreements, the City of San José's share should have reverted to 87 percent in 1983, 1987, or at the very latest, July 1, 1990. As a result, the City of San José is entitled to as much as \$1,070,000 in additional traffic fine monies. Because the City of San José and Santa Clara County have not resolved this issue after approximately nine months of negotiations, the City should pursue available legal remedies.

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<sup>6</sup> According to the Santa Clara County Department of Revenue (DOR) staff, effective October 9, 1990, DOR started distributing 87 percent of its collections to the City of San José, based on verbal authorization from the County Executive.



**RECOMMENDATION:**

We recommend that the City Manager:

**Recommendation #12:**

Consult with the City Attorney regarding possible legal remedies to address the distribution of traffic citation fines between the City of San José and Santa Clara County. (Priority 1)

## **FINDING IV**

### **THE CITY OF SAN JOSÉ'S CONTRACT WITH SANTA CLARA COUNTY FOR THE COLLECTION AND REMITTANCE OF TRAFFIC CITATIONS SHOULD BE AMENDED TO AFFORD THE CITY ADDITIONAL RIGHTS AND PROTECTIONS**

In July 1983, the City of San José and Santa Clara County entered into a contract that specified each party's rights and responsibilities regarding traffic citation fines and penalties. Recent lawsuits between other California cities and counties over the collection and distribution of traffic citation fines and penalties illustrate that these types of contracts must be explicit, thorough, and complete. However, our review of the City of San José's contract with Santa Clara County revealed that certain City rights are not explicitly stated in the contract. Specifically, we noted that the contract does not:

- Contain provisions that give the City of San José access to Santa Clara County's records or the right to audit;
- Give the City of San José the right to collect fines and penalties on traffic citations; or
- Impose timeliness of remittance requirements on Santa Clara County.

As a result, the City of San José is exposed to the risk of not receiving its rightful share of traffic citation fines and penalties in a timely manner.

### **The 1983 Agreement**

On July 8, 1983, Santa Clara County and the City of San José entered into the third amendment regarding the distribution of fines, fees, and forfeitures. This amendment was necessary because Santa Clara County initiated an accounts receivable program permitting violators to pay their fines and forfeitures on a time-payment basis. The Santa Clara County Department of Revenue was to administer the accounts receivable program.

Section 1463 of the Penal Code of the State of California prescribes the percentages for distribution of fines and forfeitures between counties and cities. Section 1463 also provides that a county and a city may, by mutual agreement, adjust the percentages. On September 15, 1977, the City of San José and Santa Clara County entered into an agreement to adjust their respective percentages. The purpose of this agreement was to enable Santa Clara County to automate traffic citation administration in the San José-Milpitas Municipal Court. Since 1977, the City of San José and Santa Clara County have amended their agreement six times.

The first and second amendments, executed in 1979 and 1980, addressed parking citations. On July 8, 1983, Santa Clara County and the City of San José entered into the third amendment. This amendment to the agreement adjusted the distribution of court-ordered accounts receivable under Penal Code Section 1463. Specifically, the third amendment authorized the Santa Clara County Department of Revenue to deduct its costs of collection from the amount collected and subject to distribution to the City of San José. The Santa Clara County Department of Revenue's costs of collection are to include salaries and benefits for employees, transportation, postage, forms, supplies, computer processing costs, equipment, and the Department's share of Santa Clara County Controller calculated County indirect overhead. Installment fees the Santa Clara County Department of Revenues collects from defendants pursuant to Section 1205 of the Penal Code are used to offset the total cost of collection. Net collections (collections plus

installment fees, less the costs of collection) are distributed 20 percent to Santa Clara County and 80 percent to the City of San José. The fourth, fifth, and sixth amendments to the City/County contract executed on June 23, 1987; June 28, 1988; and June 27, 1989, authorized a month-to-month extension of the contract.

### **Recent Lawsuits Involving California Cities and Counties**

On November 5, 1982, the City of Sacramento issued a press release which said the City and the County of Sacramento had settled litigation over the distribution of revenue generated by municipal court fines arising from arrests or citations issued within the city limits. The dispute was rooted in differing legal interpretations of a complex set of applicable statutes dealing with fine revenue distribution. The Sacramento City/County settlement was incorporated into an agreement dated November 16, 1982 relating to the ongoing distribution of municipal court fines. This agreement had two provisions relevant to our audit:

1. Accounting Provision; and
2. City's Right To Collect Fines Provision.

The accounting provision states:

*“At least quarterly, the County shall provide to the City in written form data relating to the various categories of fines to which this agreement is applicable which are the bases for the amounts distributed by the County to the City and the County as provided by this agreement. Such data shall be provided in sufficient detail and in a form appropriate for the purpose of enabling the City to verify the accuracy of the County’s computations and the correctness of the amounts distributed to the City. Upon reasonable advance notice the City shall have the right to inspect relevant County records to determine the accuracy of the data furnished under this paragraph.”*

The City’s Right To Collect Fines Provision says:

*“If legal authority exists for the City itself to collect fines which are based on arrest within or citations issued within the boundaries of the City, the existence of this agreement shall not prevent the City from exercising such authority. If such authority is exercised by the City, the statutory formulae for distribution in effect at the time the City elects to exercise its authority shall govern Municipal Court fine revenue distribution. If the City exercises such authority, the City shall provide data relating to such fines to the County subject to the same conditions as are specified in the accounting provision of the agreement.”*

Litigation between cities and counties regarding the allocation and distribution of fine and forfeiture revenues have also occurred in the following California counties:

- Alameda
- Stanislaus
- Contra Costa
- San Bernardino
- Los Angeles

- Ventura
- Shasta

### **Certain City Of San José Rights Are Not Explicitly Stated**

Our review of the City of San José's contract with Santa Clara County revealed that certain City rights are not explicitly stated in the contract. Specifically, we noted that the contract does not:

- Contain provisions that give the City of San José access to Santa Clara County's records or the right to audit;
- Give the City of San José the right to collect fines and penalties on traffic citations; or
- Impose timeliness of remittance requirements on Santa Clara County.

The absence of such provisions results in the omission of explicit performance standards and may cause an impasse in contract negotiations between the City of San José and Santa Clara County.

Santa Clara County is a trustee of City of San José funds and as such has a fiduciary responsibility to the City. However, without explicit access to Santa Clara County records, the City of San José cannot assess how the County is fulfilling its responsibility. Accordingly, the City of San José should have access to those Santa Clara County records upon which the City's share of traffic citation monies is determined. These Santa Clara County records include:

- Accounting records--hard copy, as well as computer readable data not subject to confidentiality restrictions;
- Written policies and procedures;

- Correspondence;
- Supporting documentation;
- General ledger entries;
- Records necessary to evaluate and verify Santa Clara County calculated direct and indirect cost, including overhead allocations; and
- Any other supporting evidence the City of San José deems necessary to assess Santa Clara County's performance under the contract.

In addition, the City of San José should have a contract right, similar to the City of Sacramento (Page 57), to inspect, audit, and reproduce any county records necessary to evaluate and verify county performance under the contract.

Further, the City of San José should have the explicit right to directly collect fines and penalties on traffic citations if it chooses to do so. This provision would protect the City of San José should Santa Clara County, for any reason, not perform its contracted functions.

Finally, the City of San José's contract with Santa Clara County should impose timeliness of remittance requirements on the County. Santa Clara County sends the City of San José a check each accounting period for collections from court-ordered accounts receivable. Santa Clara County Department of Revenue is responsible for collecting court-ordered accounts receivable. For the period of July 23, 1989, through December 9, 1990, the elapsed time between the end of Santa Clara County's accounting period and the date it issued a check to the City of San José ranged from 26 to 155 days. The average elapsed time between the end of Santa Clara County's accounting period and the date it issued a check to the City of San José was 52.6 days. Assuming Santa Clara County should be able

to remit a check within 20 days after its accounting period ends, we estimate the City of San José loses about \$5,000 per year in interest because the County is late in paying the City. The City of San José has no performance provision in its contractual agreement with Santa Clara County about remittance timeliness.

It should be noted that during the course of our audit, we discussed this matter with the Accounting and Systems Manager for Santa Clara County's Department of Revenue. As a result of our discussions, Santa Clara County's Department of Revenue reviewed the remittance process and took action to reduce the time required to pay the City of San José. Specifically, Santa Clara County's Department of Revenue personnel developed a form to monitor how the Department and the Santa Clara County Controller are performing their respective remittance process responsibilities. Santa Clara County implemented this form for the accounting period ending January 13, 1991.

Recent lawsuits between other California cities and counties over the collection and distribution of traffic citation fines and penalties illustrate that contracts between municipalities and counties must be explicit, thorough, and complete. When such a contract does not exist, the city is exposed to the risk of not receiving its rightful share of traffic fines and penalties in a timely manner because there are no enforceable standards of performance.



## **CONCLUSION**

The absence of explicit provisions in the contractual agreement between the City of San José and Santa Clara County for the collection and remittance of traffic citation monies exposes the City to the risk of not receiving all the revenues to which it is entitled in a timely manner. Recent lawsuits between other California cities and counties over the collection and distribution of fines from traffic offenses demonstrate that these types of contracts should be explicit, comprehensive, and complete regarding city rights and protections.

## **RECOMMENDATION**

We recommend that the City Manager:

### **Recommendation #13:**

Incorporate sufficiently explicit language in the City of San José's next contract with Santa Clara County regarding traffic fines and penalties to provide for the following:

- Specific Santa Clara County accounting requirements and a City of San José right to audit the County's records;
- A City of San José right, subject to legal authority, to collect its own traffic citation fines and penalties; and
- Timeliness of remittance performance standards. (Priority 1)

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